

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
<b>Broadcast Localism</b>	)	<b>MB Docket No. 04-233</b>
	)	
To: The Commission		

**COMMENTS OF**  
**THE LIVINGSTON RADIO COMPANY**

1. The Livingston Radio Company (“Livingston”) hereby submits its Comments in response to the Commission’s Notice of Inquiry in the above-captioned proceeding, FCC 04-129, released July 1, 2004. Livingston is the licensee of WHMI-FM, Howell, Michigan, a stand-alone station that has been owned, operated, and managed for the past 15 years by Greg and Marcia Jablonski, who have no other broadcast interests. Livingston believes that the Commission’s Inquiry is headed in the wrong direction. Programming on radio stations is dictated by public demand, and public demand will always be a far more effective influence than governmental regulation. Many of the changes in radio programming over recent years are the result of a Congressional decision to permit increased consolidated ownership, along with dramatic changes in technology that have increased competition, forcing broadcasters to be more, rather than less, responsive to local public needs and interests. The imposition of increased regulation would penalize stations like WHMI-FM, that provide an intensely local programming service, because of the government’s apparent desire to modify the program content of stations other than WHMI-FM, and what looks like an interest in imposing the opinion of regulators as to what the public really wants or ought to hear.

2. WHMI-FM is licensed to Howell, the county seat of Livingston County, Michigan. Its owners reside in Livingston County and make their livelihood operating the radio station. They are closely attuned to the needs of their listeners, and they respond to those needs. The station has a full-fledged local news department and presents significant quantities of both news and public affairs material of local interest. Its listenership reflects the station's level of service; more people in the county tune in to WHMI-FM at some time during the week than tune to any other station, including those from the nearby markets of Detroit, Lansing, Ann Arbor, and Flint that have strong signals in Livingston County and offer highly competitive mass audience entertainment.

3. The needs and interests of WHMI-FM's audience vary over time, so WHMI-FM's programming also varies. For example, the station used to broadcast a local high school sports event every Friday night. A different school's game was selected each week. While that particular game was of great interest to the students, families, and supporters of the two schools involved, it became clear that the programming was of limited or no interest to our listeners who support one of the many other local schools or those who would prefer that our normal music and news programming not be interrupted for sports at all. Therefore, the station discontinued the play-by-play coverage, replacing it with sports updates, running three to four minutes twice an hour, that recap several of the games in progress. While complete play-by-play coverage is no longer provided, we now air something of interest to more of the station's listeners, and the station's usual music and news format is not suspended on Friday evenings. The public has been receptive to the new programming, and the station will continue the sports update approach.

4. It is offensive to Livingston and the Jablonskis that the federal government might think it knows more than they do about what the audience in Livingston County wants or needs to hear, especially in today's era when the First Amendment is supposedly enjoying expanded appreciation. The first arbiter of what programming a listener should hear must be the listener, and certainly not the government. What is the Commission's objective -- to make every station in the country become a news and public affairs outlet? With the increased number of stations now on the dial and the trend toward highly specialized formats, why does anyone think that it would be a good idea to homogenize stations by forcing them all to increase their news and public affairs content? With push-button and remote control tuning the norm in radio receivers, what is wrong with listeners simply changing stations if they want to listen to a different kind of program?

5. If what is really irritating the Commission is that many stations lack the kind of local presence that exists at WHMI-FM, and that change is perceived to have resulted from consolidated ownership and centralized programming decisions, it must be remembered that consolidation was set in motion by an intentional act of Congress, when it relaxed multiple ownership limits eight years ago. Maybe the Commission wants to say that each owner of multiple stations in the same market should present a certain amount of news and public affairs on at least one of its outlets. In Livingston's view, that is still too much imposition of the government's view of what the public should hear; but if consolidation is the problem, then the Commission should take it up with Congress or at least confine any new regulatory activities to the groups that are perceived to be the source of the problem.

6. The thought obviously occurs that Livingston should not be concerned about new local content regulations, because WHMI-FM's programming would certainly fulfill any new requirements that might be adopted and would require no change. But that is not the point. The point is that the government should not be making content decisions. Moreover, even if there were no impact on the content of WHMI-FM's programming, Livingston would undoubtedly be faced with new record-keeping and reporting obligations so that it could prove compliance at license renewal or audit time.<sup>1</sup> Broadcasters are already subject to a sufficient amount of paper work, much of which does not appear to have any direct impact on the day-to-day interaction of the station with the public. To impose more will only divert a small station's limited resources away from serving the public. Mr. and Mrs. Jablonski would prefer to produce programming and not fill out forms. As with many other government regulations, the burden on small businesses with the fewest resources to spare would be the greatest -- contrary to well-established government policy to promote the growth of small business.

7. The idea that stations should be required to focus more attention on their communities of license, as opposed to surrounding communities, is also flawed. Stations certainly should not neglect their own community of license; but again, there are myriad factors that determine where stations direct their programming efforts. There are twenty municipalities in Livingston County; and as the only station licensed in the county, WHMI-FM does not want to neglect any of them. Where there is a demand, service is provided. WHMI-FM is a Class A station with a limited

---

<sup>1</sup> Livingston urges that there is no reason to require license renewal applications more often than once every eight years. There is ample opportunity for the public to evaluate the performance of broadcast stations in the interim, by inspecting issues-programs lists in the public file and by filing complaints if a station's performance is inadequate.

service area, so it is not likely to try to serve audiences far from its community of license. If the Commission believes there is a problem with community of license neglect by Class B or C stations that have large service areas but are licensed to small communities, perhaps the remedy lies in turning away from interpreting Section 307(b) of the Communications Act to give so strong a priority to first local transmission service that all other considerations fall by the wayside, and refusing to grant 307(b) allotment preferences that result in high powered stations being licensed to tiny communities that can be adequately served with a low powered allotment. Again, imposing new burdens on small businesses that are already doing their job will only create a problem, not solve one.

8. In the end, terrestrial radio broadcasters will be forced to increase and improve their local services by at least four major technological developments: (a) push-button and memory tuning makes it so easy for listeners to change frequencies that a station must provide highly desirable programming to keep the attention of its audience; (b) satellite based radio (XM and Sirius) now offer such a variety of programming backed by such great economic resources (much greater than those of any single terrestrial station) that terrestrial stations must compete by distinguishing themselves with local program content; (c) the proliferation of portable music devices (battery-operated "Walkman" CD players, miniature MP3 players, devices with huge storage capacity, such as iPods) makes it so easy for listeners to carry their favorite music around with them that broadcasters cannot rely on music alone and must offer innovative informational content of local interest to keep listeners; and (d) Internet-based audio services offer almost unlimited choices to both those who wish to speak and those who choose to listen. All of this variety dictates that government information is uncalled for, because no one today enjoys

anything even close to monopoly access to listeners, and listeners can get almost anything they want to hear with relative ease. These technological and economic forces will drive terrestrial broadcasters toward local content far more effectively than any governmental regulation.<sup>2</sup>

9. The impact of Internet services must be acknowledged. Much of the justification for regulating broadcast content in the past has related to the scarcity of frequencies, with demand far exceeding supply. Demand for frequencies may still exceed supply today for economic reasons -- broadcasting is still perceived as a profitable investment; but it can no longer be said that members of the public who want to disseminate their ideas have no ready way to reach the public short of the expense of publishing a newspaper. The Internet has no constraints; anyone who wishes to speak or offer any idea can easily start an Internet-based “radio” station that can be received anywhere in the world. In contrast, terrestrial radio stations serve only a discreet and relatively small geographic area, unless they open their own Internet portal. So there is no longer a constraint on reaching the public with ideas, and any such notion of constraint concept does not justify an attempt to expand regulation of broadcast program content.<sup>3</sup>

10. It almost sounds like the Commission is yearning for what some people call the “Golden Age of Radio.” It is not so clear that the radio of the 1930’s through 1950’s was better than what we have today. At that time there were far fewer stations, and the most popular programming of the day was network-based and decidedly non-local. In addition to today’s

---

<sup>2</sup> Technological and economic forces are inexorable and ultimately produce results. Government regulations produce work for lawyers trying to find avoidance schemes to enable their clients to do the things to which the technological and economic forces are driving them.

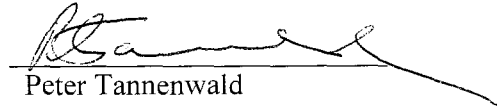
<sup>3</sup> Livingston does not object to regulations against obscenity and indecency, as that material is considered to be socially harmful and morally offensive. That kind of regulation is far different from forcing stations to carry news and public affairs and locally produced programs.

abundance of stations, we have many advanced audio technologies. We have inexpensive radio receivers and music players of every size and variety available at drugs stores and convenience stores. Listeners have more choices and more variety than ever. The radio broadcasting industry is adapting to a new world and is much more compelled today to provide programming of interest to its local audience than it was 50 years ago, when there were many fewer audio outlets, and listeners could "take it or leave it" with respect to a radio station's program content.

11. Some of the changes in the last decade have been generated by technology, and some were generated by Congressional relaxation of ownership limits. None of these changes is any reason for the government to start dictating programming content; local audiences will do a more than adequate job.

Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., N.W., Suite 200  
Washington, DC 20036-3101  
Tel. 202-728-0400  
Fax 202-728-0354

Respectfully submitted,

  
Peter Tannenwald

Counsel for The Livingston  
Radio Company